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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 933 of 1996

in

SPECIAL CIVIL APPLICATION No 5984 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and

MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not? -No. @o
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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

CHHAGANLAL ARJANBHAI THAKKAR

Versus

DY COLLECTOR

Appearance:

Mr.Yogesh Lakhani, Advocate, for the appellant.

Mr.Dhaval C. Dave, AGP, for respondents Nos. 1 and 2.

MR YS MANKAD for Respondent No. 3

CORAM : THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

Date of decision: 19/09/96

ORAL JUDGEMENT : (Per G.D. Kamat, C.J.)

Admit. Mr.Dhaval C. Dave, AGP, and Mr.Y.S. Mankad, waive service of notice of admission on behalf of respondents Nos. 1 and 2, and respondent No.3, respectively. By consent, to be heard forthwith.

Original Petitioner in Special Civil Application No.5984 of 1996 challenges the order of the learned single Judge dated 13th of August, 1996, whereby the Special Civil Application was rejected on the ground that the appellant-petitioner is free to challenge the elections after the same are held.

Respondent No.3 is a Specified Society and election to the Board of Directors is required to be held in accordance with the provisions of Chapter XIA of the Gujarat Co-operative Societies Act, 1961. The provisional list of voters for Bhachau Taluka Voters' Group No.6 was published by the Deputy Collector on 29th March, 1996.It is common ground that the appellant-petitioner took objection to the voters' list on the ground that the Chairman of the District Panchayat Committee, Kutch at Bhuj has given provisional registration for large number of Societies only on 29th March, 1996 and that at any rate, those societies, provisionally registered on 29th March, 1996, could not have figured in the list of voters. The Deputy Collector, at Bhuj, by his order dated 3rd of August, 1996,rejected the objections raised on behalf of the appellant-petitioner. This order was challenged by the appellant before the learned single Judge in the Special Civil Application on large number of grounds. It is the case of the appellants that, in the first place, the Registrar of Co-operative Societies is the only Competent Authority under Section 9 of the Gujarat Co-operative

Societies Act, 1961 to register co-operative societies within his jurisdiction and that, in any case, the Chairman of the District Panchayat Committee could not have given any registration, provisional or permanent, in favour of any co-operative Society. It is also the case of the appellant-petitioner that 'Gopalak Co-operative Societies' could not have been clubbed as voters in group No.6 of Bhachau Taluka Voters on the ground that such Societies cannot be grouped with agricultural societies. Lastly, it is also the contention of the appellant-petitioner that regard being had to sub-section (3) of Section 9, the provisionally registered societies could not be the voters at the ensuing elections as they are not permanent societies and, therefore, the question of application of sub-section (5) of Section 9 to such Societies would not arise.

We have seen the order passed by the Deputy Collector dated 3rd of August, 1996 and from the same, it is clear that the Deputy Collector invoked sub-section (5) of Section 9 of the Act. It is ex facie clear that sub-section (5) could not have been invoked in so far as provisionally registered societies are concerned and, therefore, the Deputy Collector seems to be prima facie in error.

In our view, the contentions raised by the appellant-petitioner touch the very jurisdiction of the provisionally registered societies, and which are sought to be included in the voters' list of group No.6 and the same requires consideration. Leaving the appellant-petitioner to challenge the election after the elections are held may create large number of problems and the whole process of election may also prove to be futile. In this view of the matter, the impugned order of the learned single Judge dated 13th of August, 1996 is quashed and set aside. Rule is issued in the Special Civil Application and the same is remanded to the learned single Judge to dispose of the petition in accordance with law, as early as possible. Appeal to the extent indicated above is allowed. No costs.

Liberty to the appellant to amend the petition by impleading Gopalak Co-operative Societies, which figure in the provisional list of voters.

(apj)

